No. 55813-1-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

GERALD ENGELHART and BARBARA ENGELHART,
Appellants

v

GERALDINE STRONG, Respondent

BRIEF OF APPELLANT

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INTRODUCTION

This is a dispute over the proceeds from the sale of a home at 1001 73rd N.E. in Thurston county. Appellants Gerald and Barbara Engelhart assert that the proceeds of the sale are available to partially satisfy a judgment against Kelly Chacon and Lecia Chacon. Respondent Strong, who is Lecia Chacon's mother and the former mother in law of Kelly Chacon, asserts that she is entitled to the funds. The Engelharts also have claims for unjust enrichment and voidable transfer or fraudulent conveyance.

PROCEDURAL HISTORY

The Engelharts obtained a judgment against the Chacons for an unpaid loan in Thurston County Superior Court cause 07-2-02564-0 (Ex. 1 admitted at RP 28 line 2). In Thurston County Superior Court cause 10-2-02270-5, the Engelharts obtained a judgment entered by then Judge Paula Casey that a Deed of Trust executed by the Chacons for the benefit of Ms. Strong was void and of no force and effect (Ex. 5 admitted at RP 60 line 6). This

case was tried by Judge Sharonda Amamilo in a bench trial (CP 109 - 115). Judge Amamilo awarded Ms. Strong $211,166.55 and awarded the Engelharts $113,705.06 (CP 115).

ASSIGNMENTS OF ERROR

The trial court erred when it:

1. Found that at any time on or after March 7, 2008, when the Engelhart judgment against the Chacons was entered in cause No. 07-2-02564-0, Ms. Strong and the Chacons had an agreement that Kelly Chacon would build two houses on the lot, one for the Chacons and a second for Ms. Strong (Finding of Fact 1.4 CP 110 lines 13 - 15).

2. Found that the Chacons were expected to repay Ms. Strong only $220,500 (Finding of Fact 1.9 CP 111 lines 15 - 17).

3. Found that $78,445.48 the Chacons paid Ms. Strong was in an effort to contribute toward the Chacons' share of the cost of a joint project (Finding of Fact 1.11 CP 112 lines 1 - 2).

4. Found that the $78,445.48 was payment toward the

Chacons' cotenant property interests and constituted the Chacons' contribution toward acquisition and improvement of the property by partially reimbursing Ms. Strong (Finding of Fact 1.11 CP 112 lines 6 - 7).

5. Found that the $78,445.48 was in exchange for an increase in the Chacons' cotenant interest (Finding of Fact 1.11 CP 112 lines 10 - 11).

6. Found that the $78,445.48 constituted reasonably equivalent value and was not payment of antecedent debt (Finding of Fact 1.11 CP 112 lines 10 - 11; Conclusion of Law 2.7 CP 114 lines 15 - 19).

7. Concluded that the $78,445.48 was not fraudulent (voidable) transfers under RCW 19.40.041 or RCW 19.40.051(1) or (2) (Conclusion of Law 2.7 CP 114 lines 15 - 17).

8. Concluded that claims under Chapter 19.40 RCW are barred by the Statute of Limitations (Conclusion of Law 2.7 CP 114 lines 16 - 19).

9. Found that the judgment entered by then Judge Paula Casey in cause 10-2-02270-5 that a Deed of Trust granted by the Chacons to Ms. Strong was void and of no force and effect resulted in the Promissory Note from Lecia Chacon to Ms. Strong being void (Finding of Fact 1.13 CP 112 line 18 - CP 113 line 2).

10. Found that Ms. Strong and the Chacons were cotenants, not creditor and debtors (Finding of Fact 1.18 CP 113 line 15; Conclusion of Law 2.2 CP 113 lines 20 - 22; Conclusion of Law 2.3 CP 114 line 1).

11. Concluded that the Engelharts were not entitled to judgment against Ms. Strong for any of the $85,000.87 the Engelharts paid to cure a default on a mortgage from American General Finance (Rushmore) (Conclusion of Law 2.6 CP 114 lines 12 - 14).

12. Concluded that Engelhart claims under Chapter 41. 40 RCW are barred by the doctrine of laches (Conclusion of Law

2.8 CP 114 line 20).[1]

13. Found that based on their respective contributions, Ms. Strong had an interest in the property as a tenant in common of 65% and the Chacons had an interest of 35% (Conclusion of Law 2.5 CP 114 lines 5 - 6).

14. Concluded that Ms. Strong should be awarded 65% of the funds from the sale of the property and that the Engelharts should be awarded 35% (Conclusion of Law 2.5 CP 114 lines 8 - 11).

15. Entered judgment for Ms. Strong of $211,166.55 and for the Engelharts of only $113,705.06 (Judgment 3.1 CP 115 lines 5 - 11).

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[1] The Engelharts have no claim under Chapter 41.40 RCW which governs the Public Employees' Retirement System. They assume that the trial court intended to refer to their claim for voidable conveyance or fraudulent transfer under Chapter 19.40 RCW.

FACTUAL HISTORY

On March 7, 2008 the Engelharts obtained and recorded a judgment in Thurston County Superior Court cause 07-02564-0 against Kelly Chacon and Lecia Chacon for $239,397.82 (Ex. 1). The judgment was a lien against interests in real property in Thurston county owned by the Chacons. With accrued interest, at the time of trial, the debt was $575,791.70 (RP 34 lines 18 - 21).

Ms. Strong is the mother of Lecia Chacon (Finding of Fact 1.3 CP 110 lines 9 - 10). The Chacons were married from February 3, 2005 to May 19, 2015 (*Id.*). Ms. Strong put up $185,984.46 that purchased the then undeveloped lot (Finding of Fact 1.6 CP 111 lines 1 - 4). At the time of the purchase, Lecia Chacon promised Ms. Strong that the Chacons would pay her back (Ex. 8 page 1 admitted at RP 46 lines 8 - 9). On September 27, 2005, the lot was deeded to the Chacons and Ms. Strong as tenants in common (Ex. 3 admitted at RP 60 line 6).

Early on, Ms. Strong and the Chacons apparently agreed informally over the phone, without any written agreement, that Kelly Chacon would build a home for the Chacons and then a second home for Ms. Strong (Finding of Fact 1.4 CP 110 lines 13 - 15 RP 127 lines 18 -22).

Between September 2005 and October 2006, Ms. Strong disbursed $201,751.36 to Mr. Chacon for construction Finding of Fact 1.8 CP 111 lines 10 - 11; Ex. 504 page 1 admitted at RP 125 lines 15 - 18). All of the money was used in building the Chacon home (RP 221 lines 8 - 9).

On March 5, 2007, Kelly Chacon borrowed $135,583.21 from American General Finance (Finding of Fact 1.10 CP 111lines 18 - 19 and Ex. 14 admitted at RP 59 at line 15). Although Ms. Strong was not a borrower, she joined granting a Deed of Trust that benefitted American General Finance (Ex. 14). Mr. Chacon spent the money on "construction of the house on 73rd Avenue" (RP 272 lines 23 - 24). He purchased roofing,

flooring, cabinets and other building materials (RP 272 line 25 - RP 273 line 1, RP 273 line 23 - RP 274 line 11).

Ms. Strong testified that when Kelly Chacon obtained the loan from American General in March 2007, her agreement with the Chacons changed:

> I realized in 2007 when Kelly wanted the loan with the finance company – I realized then that they didn't have the money to build the house, to build the house for me. I realized then.

(RP 130 lines 2 - 5).

Ms. Strong also testified:

> Q. [I]n 2007 you're testifying that you had come to the conclusion that this plan wasn't gonna work; is that right?
>
> A. That's why I sold the property in Livermore, because I knew –

(RP 130 lines 15 - 19).

Ms. Strong further testified:

> Q. So you've indicated that in this time period, around 2007, these things were happening and your plans changed, correct?

A. Correct.

Q. What was the change in your plans?

A. That I had to move out of the house in Livermore, that I wasn't going to be able to live in Washington.

Q. And so if you weren't going to be able to – the plan had been for a house to be built for you to live on that property, correct?

A. Correct.

Q. Okay. If you weren't going to be living in Washington, what was your plan with regard to the fact that you had invested all this money into the property and the house in Washington?

A. Well, at that time it pretty much became a loan.

(RP 132 lines 3 - 18).

On March 31, 2007, twenty four days after Kelly Chacon obtained the loan from American General Finance, the Chacons began making payments to Ms. Strong that by July 2018 totaled $78,445.48 (Ex. 12 admitted at RP 57 lines 7 - 8). In a February 29, 2008 letter addressed "To Whom It May Concern," Ms.

Strong stated that the Chacons owed her $441,574 (Ex. 10 admitted at RP 52 lines 3 - 4). Ms. Strong testified that when she wrote that letter, her agreement with the Chacons was that the $441,574 was a loan (RP 191 line 17 - RP 192 line 13).

On March 7, 2008, a week after Ms. Strong wrote the letter addressed "To Whom It May Concern," the Chacons recorded a Deed of Trust for her benefit in the sum of $441,574 (Finding of Fact 1.13 CP 112 lines 18 - 19 and Ex. 14 admitted at RP 61 lines 18 - 20). Ms. Strong requested the Deed of Trust (RP 247 lines 1 - 9).

The Deed of Trust stated that it secured payment of "a promissory note of even date" (Ex. 2 page 1). However, there was no promissory note of even date (RP 230 lines 4 - 19). Lecia Chacon testified that some time after the Chacons recorded the Deed of Trust, they were told that the Deed of Trust was not valid without a promissory note (RP 232 lines 2 - 23 and RP 248 lines 8 - 13). In March 2009, a year after the Chacons executed and

recorded the Deed of Trust, Lecia Chacon executed a Promissory Note in which she promised to pay Ms. Strong $441,574 (Finding of Fact 1.13 CP 112 lines 19 - 20, Ex. 13 page 1 admitted at RP 58 lines 21 - 23).

Both Lecia Chacon and Ms. Strong affixed their signatures to the document the same day before the same notary (Ex. 13 page 2). Ms. Strong's Answer to the second amended complaint states that the promissory note was "an attempt to 'perfect' the deed of trust" (CP 49 lines 19 - 20).

The Engelharts brought suit in Thurston County Superior Court cause 10-2-02270-5 to have the Deed of Trust executed by the Chacons for the benefit of Ms. Strong declared void (Ex. 6 admitted at RP 41 lines 11 - 13). The complaint in cause 10-2-02270-5 alleged that:

> When the purported loan was agreed to by [Ms. Strong and the Chacons] and when the proceeds of the purported loan were tendered by defendant Strong to defendants Chacon, there was no promissory note and the purported loan was not

secured by a deed of trust or any other document.

(Ex. 6 page 3 § 12 lines 9 - 11).

On October 13, 2010, then Judge Paula Casey entered a judgment in favor of the Engelharts (Ex. 5 admitted at RP 41 lines 11 - 13). Judge Casey found that the Deed of Trust executed by the Chacons for the benefit of Ms. Strong was void and of no force and effect (Ex. 5 page 2 lines 6 - 10, Judge Casey's Finding of Fact No. 3 and Judge Casey's Conclusion of Law)(Ex. 5 was admitted at RP 60 lines 4 - 6). Judge Casey reserved the "issue of the nature and extent of the interest of defendants Chacon in the real property" (Ex. 5 page 2 lines 14 - 15).

Over time, the Chacons paid Ms. Strong $78,445.48 (Ex. 12). Of that sum, the Chacons paid the first $47,545,48 on or before January 21, 2015 (*Id.*). On February 14, 2015, the Chacons quit claimed their interest to Ms. Strong (Finding of Fact 1.15 CP 113 lines 6 - 7). In a June 3, 2015 letter to the Engelharts, Ms. Strong stated that she had requested a deed

"many times" (Ex. 8 page 2). After quit claiming their interest to Ms. Strong, the Chacons paid Ms. Strong the final $30,900 of the $78,445.48 (Ex. 12).

In the letter to the Engelharts Ms. Strong wrote:

> On 5 March 2007 I signed a contract loan in the amount of $135,000 against the property in Washington to finish building the home whereby Kelly was responsible for the payments. Payments haven't been made and it is up around $160,000 as I understand from Lecia. The finance company won't give me any information and it went into foreclosure.

(Ex. 8 page 1). In the letter Ms. Strong also stated "Yes, I'm sorry to say L & K [Lecia and Kelly] do owe me $441,000" (*Id.*).

To protect their judgment lien, the Engelharts cured the default on the American General Finance loan by paying $85,000.87 (Ex. 23 admitted at RP 73 lines 23 - 25 and Ex. 24 admitted at RP 75 lines 13 - 14). The summons and complaint in this matter were filed September 19, 2017 (CP 1). The trial court entered judgment for Ms. Strong of $211,166.55 and for the

Engelharts of $113,705.06 (CP 115).

ISSUES

1. Does Ms. Strong have the burden of proving what interest in the property was not encumbered by the judgment lien?

2. Did Ms. Strong ratify the Deed of Trust executed by the Chacons and the subsequent Promissory Note executed by Lecia Chacon?

3. What interest in the lot was subject to the Engelhart judgment lien?

4. What interest in the improvements was subject to the Engelhart judgment lien?

5. Are the Engelharts entitled to recover all or any of the $85,000.87 they paid to cure the default in the mortgage?

6. Were the payments from the Chacons to Ms. Strong voidable conveyances or fraudulent transfers?

7. Is any Engelhart claim barred by the doctrine of laches?

8. Are any of the Engelhart claims for voidable conveyance or fraudulent transfer barred by the Statute of Limitations?

9. Should the Statute of Limitations be equitably tolled?

ARGUMENT

I. STANDARD OF REVIEW

Following a bench trial, an appellate court reviews whether substantial evidence supports the findings of fact and, if so, whether the findings of fact support the conclusions of law. *State v. Horman*, 181 Wn.2d 102, 105, 330 P.3d 182 (2014). Substantial evidence exists when there is sufficient evidence in the record to persuade a fair-minded, rational person of the truth of the finding. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994)).

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II. THE BURDEN OF PROOF IS ON MS. STRONG TO SHOW WHAT INTEREST IN THE PROPERTY WAS NOT ENCUMBERED BY THE JUDGMENT LIEN

Chapter 6.19 RCW governs adverse claims to property that is subject to execution. Under RCW 6.19.030(1) the burden of proof is on one who claims that an interest in property is not subject to execution. *Hauf v. Johnston*, 105 Wn. App. 807, 21 P.3d 325 (2001). Hauf had a judgment against the Burglins, who were buying property on a real estate contract. *Id.* at 808. The Burglins quit claimed their interest to the sellers in lieu of foreclosure. *Id.* After getting the property back, the sellers sold to Johnston. *Id.* at 809. Hauf then brought suit to foreclose his judgment lien against the property. *Id.*

The court of appeals opined that under RCW 6.19.030(1), the burden of proof was on Johnson to show that the property was not subject to Hauf's judgment lien:

> Title 6 RCW, pertaining to the enforcement of judgments, does not require the judgment creditor to

> prove the amount of the debtor's interest in real property prior to execution of a judgment lien. Rather, the law places the burden on persons claiming an interest in the property that is adverse to the debtor to prove what their interest is.

Id. at 812.

The court of appeals then applied this principle:

> Here, Mr. Johnston is the successor to the sellers' interest in the property. In opposing Mr. Hauf's judgment lien, he has the burden under RCW 6.19.030(1) of showing the amount of the sellers' interest and that it had priority over Mr. Hauf's judgment lien. He [Johnston] is entitled to judgment in his favor only 'to the extent [that] his claim has been established." *See* RCW 6.19.060.

Id. at 812 - 813. Here, the burden is on Ms. Strong to show that she had an interest in the property that was not subject to the judgment lien and the extent of that interest. She did not do so.

III. THE FOLLOWING FINDINGS OF FACT ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

A. The Finding That The Agreement Between Ms. Strong And The Chacons Was That The Chacons Would Build Two Houses

The trial court found that Ms. Strong and the Chacons had an agreement that Kelly Chacon would build two houses on the lot, one for the Chacons then a second for Ms. Strong (Finding of Fact 1.4 CP 110 lines 13 - 14). Both Ms. Strong and Lecia Chacon testified that the agreement was not in writing (RP 127 lines 18 - 22 and RP 218 lines 11 - 14). That agreement was abandoned in March 2007, a year before the Engelhart judgment was entered March 7, 2008. Ms. Strong testified that:

> I realized in 2007 when Kelly wanted the loan with the finance company – I realized then that they didn't have the money to build the house, to build the house for me. I realized then.[2]

(RP 130 lines 2 - 5).

Ms. Strong testified that:

> Q. [I]n 2007 you're testifying that you had come to the conclusion that this plan wasn't gonna work; is that right?

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[2] Kelly Chacon got the loan from American General Finance March 5, 2007 (Ex. 14 page 1).

A. That's why I sold the property in Livermore, because I knew –

(RP 130 lines 15 - 19).

Ms. Strong testified:

Q. So you've indicated that in this time period, around 2007, these things were happening and your plans changed, correct?

A. Correct.

Q. What was the change in your plans?

A. That I had to move out of the house in Livermore, that I wasn't going to be able to live in Washington.

Q. And so if you weren't going to be able to – the plan had been for a house to be built for you to live on that property, correct?

A. Correct?

Q. Okay. If you weren't going to be living in Washington, what was your plan with regard to the fact that you had invested all this money into the property and the house in Washington?

A. Well, at that time it pretty much became a loan.

(RP 132 lines 3 - 18).

Ms. Strong subsequently testified as follows:

> Q. [A]nd at what time did you begin to look at this as more of a loan than a project, I guess?
>
> A. 2007. 2008. I gave up on it being a project in 2007 'cause I felt like I was pretty much out of the picture because they weren't going to be able to build a second house for myself.

(RP 166 lines 10 - 15). Later in her testimony Ms. Strong again stated that in 2007 she considered the funds a loan (RP 197 line 21).

On March 31, 2007, the Chacons made the first in an eleven year long series of payments to Ms. Strong (Ex. 12). That day, the Chacons paid Ms. Strong $6,000 (*Id.*). The Chacons paid Ms. Strong a total of $78,445.48 (*Id.*).

In a February 29, 2008 letter addressed "To Whom It May Concern," Ms. Strong stated that the Chacons owed her $441,574 (Ex. 10). Ms. Strong testified that when she wrote the letter the Chacons owed her $441,574 (RP 197 lines 6 - 8).

On March 7, 2008, the same day the Engelhart judgment against the Chacons was entered, the Chacons recorded a Deed of Trust for the benefit of Ms. Strong that purported to secure payment of $441,574 (Finding of Fact 1.13 CP 112 lines 18 - 19 and Exhibits 1 and 2). Although Judge Casey later entered a judgment in cause 10-2-02270-5 that the Deed of Trust was "void and of no force and effect," the Deed of Trust is nonetheless a statement by the Chacons that the $441,574 was a loan (Exhibits 2 and 5).

In March 2009, a year after the Chacons executed and recorded the Deed of Trust, Lecia Chacon executed and recorded a Promissory Note to Ms. Strong (Finding of Fact 1.13 CP 112 lines 19 - 20 and Ex. 13). In the Note Ms. Chacon promised to pay Ms. Strong $441,574 (Ex. 13). Lecia Chacon testified that she executed the Promissory Note because she was told that the Deed of Trust was not valid without a promissory note (RP 248 lines 8 - 23). Ms. Strong affixed her signature to the document

the same day Lecia Chacon signed it before the same notary (Ex. 13 page 2, RP 248 lines 14 - 17).

Ms. Strong's Answer to the Second Amended Complaint states that the promissory note was "an attempt to 'perfect' the deed of trust" (CP 49 lines 19 - 20, RP 232 lines 2 - 23). Any agreement Ms. Strong and the Chacons had that Kelly Chacon would build two houses, one for the Chacons, then one for Ms. Strong, ended before the Engelharts obtained their judgment against the Chacons March 7, 2008.

B. The Finding That The Agreement Between Ms. Strong And The Chacons Was That The Chacons Would Repay Ms. Strong Only $220,000, Not $441,574

The trial court found that the agreement between Ms. Strong and the Chacons was that the Chacons would repay Ms. Strong only $220,500, not $441,574 (Finding of Fact 1.9 CP 111 lines 15 - 17). As discussed in §III(A) above, Ms. Strong and the Chacons repeatedly stated in writing that the Chacons owed Ms.

Strong $441,574 or $441,000. In her February 29, 2008 letter addressed To Whom It May Concern, Ms. Strong stated that the Chacons owed her $441,574 (Ex. 10). The March 7, 2008 Deed of Trust for the benefit of Ms. Strong stated that the Chacons owed her $441,574 (Ex. 2).

In the March 25, 2009 Promissory Note Lecia Chacon promised to pay Ms. Strong $441,574 (Ex. 13). In her June 3, 2015 letter to the Engelharts, Ms. Strong stated that the Chacons owed her $441,000 (Ex. 8 page 1). The Chacons owed Ms. Strong $441,574, not merely $220,000.

C. The Finding That $78,445.48 The Chacons Paid Ms. Strong Was An Effort To Contribute The Chacons' Share Of The Cost Of A Joint Project To Build Two Houses

The trial court found that in an effort to contribute their share of a joint project to build two houses, the Chacons paid Ms. Strong $78,556.58 (Finding of Fact 1.11, CP 112 lines 1 - 2). As discussed in § III(A) above, the agreement to build two houses

was abandoned on or before March 31, 2007 when the Chacons paid Ms. Strong the first $6,000 of the $78,556.58. When the Chacons paid the $78,556.58 the agreement between Ms. Strong and the Chacons was that the $441,574 was a loan. Contrary to Finding of Fact 1.11, the $78,556.58 was loan payments, not contributions to a joint project to build two houses.

D. The Finding That The $78,445.48 Was Payment Toward The Chacons' Cotenant Property Interests

The trial court found that the $78,445.48 was payment toward the Chacons' cotenant property interests and constituted the Chacons' contribution toward acquisition and improvement of the property by partially reimbursing Ms. Strong and was payment in exchange for an increase in the Chacons' cotenant interest (Finding of Fact 1.11, CP 112 lines 6 - 12). As discussed in § III(A) above, the funds were payments on the $441,574 loan.

Moreover, the Chacons paid Ms. Strong the first $47,545.48 of the $78,445.48 between March 31, 2007 and

January 21, 2015 (Ex. 12). Ms. Strong requested a deed of the Chacons' interest "many times" (Ex. 8 page 2). On February 14, 2015, acceding to Ms. Strong's "many" requests, the Chacons gifted their interest in the property to her via the quit claim deed (Exhibit15). The quit claim deed conveyed all of the equity the Chacons possessed, including any equity they obtained for the first $47,545.48.

After deeding their interest to Ms. Strong, the Chacons continued to pay Ms. Strong, paying her the final $30,900 of the $78,445.48 (Ex. 12). The funds were not payments toward a cotenant property interest and were not made in exchange for an increase in the Chacons' interest.

E. The Finding That The Payments Constituted Reasonably Equivalent Value And Were Not Payment Of Antecedent Debt

The trial court found that the Chacons received reasonably equivalent value for the $78,445.48 and that the funds were not payment of antecedent debt (Finding of Fact 1.11 CP 112 lines 10

- 11). As discussed in § III(A) above, the $78,445.48 was partial payment of the $441,574 antecedent debt.

As discussed in § III (D) above, the Chacons received nothing for the $78,445.48. Any interest the Chacons acquired for the first $47,545.48 they gifted back to Ms. Strong via the Quit Claim deed. When the Chacons paid Ms. Strong the final $30,900, they had already gifted their interest to her. The Chacons did not receive reasonably equivalent value from Ms. Strong for any of the funds.

F. The Finding That The Deed Of Trust Was Void And Of No Force And Effect On The Basis That Ms. Strong Was Not A Creditor And That Ms. Strong And The Chacons Were Tenants In Common

Finding of Fact 1.13 states, in part, that:

> [O]n March 7, 2008, the Chacons executed a Deed of Trust on "the property" with the defendant as the beneficiary. A Promissory Note from the Chacons to the defendant for the amount reflected in the Deed of Trust was executed by Lecia Chacon on March 25, 2009. However, on October 13, 2010, the Deed of Trust was declared "void and of no force and

> effect" on the basis that the defendant was not a creditor but that she and the Chacons owned "the property" as tenants in common (Thurston County Superior Court Cause No. 10-2-02270-5). This had the effect of also voiding the Promissory Note that was an integral part of the "transaction" that was declared void.

(CP 112 line 18 - CP 113 line 2).

> The complaint in cause 10-2-02270-5 alleged that:
>
> When the purported loan was agreed to by the defendants and when the proceeds of the purported loan were tendered by defendant Strong to defendants Chacon, there was no promissory note and the purported loan was not secured by a deed of trust or any other document.

(Ex. 6 page 3 § 12).

The Engelharts made that allegation in the complaint in cause 10-2-02270-5 because the Deed of Trust executed by the Chacons for the benefit of Ms. Strong stated that:

> This deed is for the purpose of securing performance of each agreement of grantor herein contained, and payment of the sum of $ four hundred forty one thousand five hundred seventy four Dollars with interest, **in accordance with the terms of a promissory note of even date herewith**...

(Ex. 2 page 1 emphasis supplied).

The Deed of Trust is dated March 7, 2008 (Ex. 2). There was no promissory note "of even date" (RP 230 lines 10 - 17). Lecia Chacon signed a Promissory Note a year later, March 25, 2009 (Ex. 13). In her Answer to the second amended complaint, Ms. Strong stated that the Promissory Note was an effort "to 'perfect' the Deed of Trust" (CP 49 lines 19 - 20). The Deed of Trust was void and of no force and effect because it purported to secure payment of a promissory note that did not exist.

Contrary to Finding of Fact 1.13 entered by Judge Amamilo, Judge Casey did not find that Ms. Strong was not a creditor and did not enter the judgment in cause 10-2-02270-5 on that basis (Ex. 5). Judge Casey did not enter the judgment in cause 10-2-02270-5 on the basis that Ms. Strong and the Chacons owned the property as tenants in common (*Id.*). Judge Casey expressly reserved the "issue of the nature and extent of the interest of defendants Chacon in the real property" (*Id.* page 2

lines 14 - 15).

G. The Finding That The Deed Of Trust Was An Integral Part Of The Transaction Between Ms. Strong And The Chacons

Judge Amamilo found that the Deed of Trust was an integral part of the transaction between Ms. Strong and the Chacons that Judge Casey declared void (Finding of Fact 1.13 CP 113 lines 1 - 2). Judge Casey declared only the Deed of Trust void, nothing else (Ex. 5).

Contrary to Judge Amamilo's Finding of Fact 1.13, the Deed of Trust was a failed *post facto* attempt to create a security interest for Ms. Strong, not an integral part of the transaction between Ms. Strong and the Chacons (RP 231 lines 9 - 20). The Chacons executed the Deed of Trust March 7, 2008, thirty months after the lot was purchased in September 2005 and seventeen months after Ms. Strong disbursed to Kelly Chacon the last $10,000 of the $201,751.36 for construction in October 2006 (Ex. 3 and Ex. 504 page 1).

The Chacons executed the Deed of Trust a year after the plan to build two houses was abandoned and the agreement between Ms. Strong and the Chacons had become that the $441,574 was a loan (RP 130 lines 2 - 19 and RP 132 lines 3 - 18). It was executed eleven months after the Chacons began repaying Ms. Strong on March 31, 2007 (Ex. 12). The Deed of Trust was not an integral part of the transaction between Ms. Strong and the Chacons.

H. The Finding That The Judgment Entered By Judge Casey Had The Effect Of Voiding The Promissory Note

Judge Amamilo found that the judgment entered by Judge Casey in cause 10-2-2270-5 that the Deed of Trust was void had the effect of voiding the Promissory Note (Finding of Fact 1.13 CP 113 lines 1 - 2). In March 2007 the $441,574 became a loan (RP 132 line 18).

On March 31, 2007, the Chacons began making payments to Ms. Strong (Ex. 12). In her February 29, 2008 letter addressed

To Whom It May Concern, Ms. Strong stated that the Chacons owed her $441,574 (Ex. 10). The Chacons owed Ms. Strong $441,574 well before they executed the Deed of Trust March 7, 2008 and well before Lecia Chacon executed the Promissory Note March 25, 2009 (Exhibits 2 and 13). Moreover, as discussed in § V below, a promissory note and a deed of trust are separate obligations. The fact that the Deed of Trust was void did not void the Promissory Note.

I. The Finding That Ms. Strong And The Chacons Were Not Creditor And Debtors, And That The $78,445.48 Purchased An Interest In The Property

The trial court found that Ms. Strong and the Chacons were not creditor and debtors, and that the $78,445.48 purchased an interest in the property (Finding of Fact 1.11 CP 112). As discussed above in § III(A), D) and (E), Ms. Strong was a creditor who the Chacons owed $441,574. Moreover, as discussed above in § III(E), the Chacons received from Ms. Strong no additional

interest in the property for the $78,445.48 they paid her. The $78,445.48 was partial payment of the $441,574 antecedent debt.

J. The Finding That Based On Their Respective Contributions, Ms. Strong Had An Interest In The Property As A Tenant In Common Of 65% And The Chacons Had An Interest Of 35%

The trial court found that based on their respective contributions, Ms. Strong had an interest in the property of 65% and the Chacons had an interest of 35% (Finding of Fact 1.11 CP 112 lines 11 - 13). As discussed above in § III(A), (D), and (E), as of March 2007, every penny Ms. Strong put up to purchase the lot and for improvements was a loan to the Chacons.

IV. MS. STRONG RATIFIED THE DEED OF TRUST AND THE PROMISSORY NOTE

A contract or a deed is ratified if, after discovering facts that warrant rescission, one remains silent or continues to accept the benefits of the contract or deed. *Snohomish County v. Hawkins*, 121 Wn. App. 505, 510-511, 89 P.3d 713 (2004), review denied, 153 Wn.2d 1009 (2005). Acceptance of the

benefits of a contract or deed can be objectively manifested through conduct. *Clearwater v. Skyline Construction Company, Inc.* 67 Wn. App. 305, 320, 835 P.2d 257 (1992).

Ms. Strong requested the deed of trust (RP 247 lines 1 - 4). Lecia Chacon recorded the document (Ex. 2). Recording is *prima facie* evidence of delivery. *Brewer v. Rosenbaum*, 183 Wash. 218, 222, 48 P.2d 566 (1935). Lecia Chacon subsequently learned that the Deed of Trust was invalid because there was no promissory note (RP 248 lines 6 - 13). A year after the Chacons executed the Deed of Trust, on March 25, 2009, Ms. Chacon acknowledged before a notary public a Note in which she promised to pay Ms. Strong $441,574 (Ex. 13).

Ms. Strong knew that a promissory note was needed "to go with the deed of trust" (RP 148 lines 6 - 7). Although Ms. Strong was not a maker of the Promissory Note, she affixed her signature to the document the same day Lecia Chacon signed it before the same notary (Ex. 13 page 2, RP 248 lines 14 - 17). In her Answer

to the second amended complaint Ms. Strong stated that the Promissory Note was "an attempt to 'perfect' the deed of trust" (CP 49 lines 19 - 20). Ms. Strong ratified both the Deed of Trust and the Promissory Note.

V. AS A MATTER OF LAW THE PROMISSORY NOTE WAS NOT VOID

The trial court found that because the Deed of Trust was void the Promissory Note was also void (Finding of Fact 1.13 CP 113 lines 1 - 2). As discussed above in § III(H), that finding is not supported by substantial evidence. Moreover, it is contrary to Washington law.

In a transaction involving both a note and a deed of trust the note represents debt and the deed of trust is security for payment of the debt. *Metropolitan Mortgage v. Becker*, 64 Wn. App. 626, 631, 825 P.2d 360 (1992). A note is an obligation separate from a deed of trust that secures payment of the note. *Boeing Employees Credit Union v. Burns*, 167 Wn.App. 265, 272,

¶21, 272 P.3d 908 (2012).

A legal action may be based on a note or on a deed of trust. *Metropolitan Mortgage,* 64 Wn.App. at 631 (citing *American Fed. Sav. & Loan Ass'n. v. McCaffrey*, 107 Wn.2d 181, 189, 728 P.2d 144 (1986)). As a matter of law, the fact that the Deed of Trust was void did render the Promissory Note void.

VI. THE ENGELHARTS ARE ENTITLED TO THE PROCEEDS FROM THE SALE OF THE LOT

The lot was deeded to Ms. Strong and the Chacons as tenants in common in 2005 (Ex. 3). However, the Supreme Court opined in *Cummings v. Anderson*, 94 Wn.2d 135, 140 - 141, 614 P.2d 1284 (1980) that:

> Where, as here, the character of ownership is that of cotenancy, and the instrument by which the property was acquired is silent as to the respective interests of the coowners, it is presumed that they share equally. However, **when** in rebuttal **it is shown that they contributed unequally to the purchase price, a presumption arises that they intended to share the property proportionately to the purchase price**. *Iredell v. Iredell,* 49 Wash.2d 627, 305 P.2d 805 (1957) (emphasis supplied).

At the time of the purchase of the lot, Lecia Chacon promised that the Chacons would repay the funds put up by Ms. Strong that acquired the lot (Ex. 8 page 1). As discussed in § III(A) above, when the Engelharts obtained their judgment against the Chacons March 7, 2008, the agreement between Ms. Strong and the Chacons was that the Chacons owed Ms. Strong $441,574 including the $185,984.46 that purchased the lot. The Engelharts are entitled to the proceeds from the sale of the lot.

VII. THE ENGEHLARTS ARE ENTITLED TO THE PROCEEDS FROM THE SALE OF THE IMPROVEMENTS

When property is held by co-tenants, improvements made by one co-tenant belong to that co-tenant. *Cummings*, 94 Wn.2d at 144. Kelly Chacon built the home (RP 272 lines 7 - 18). Ms. Strong disbursed $201,751.36 to Mr. Chacon for construction (Ex. 504 page 1). Mr. Chacon used the funds to purchase materials (RP 262 lines 14 - 19). As discussed in § III(A) above, when the Engelharts obtained their judgment March 7, 2008, the

agreement between Ms. Strong and the Chacons was that the Chacons owed Ms. Strong $441,574 including the funds disbursed to Mr. Chacon for construction.

Both because Kelly Chacon built the home and because when the Engelharts received their judgment against the Chacons, the agreement between Ms. Strong and the Chacons was that the funds were a loan, the Chacons owned the improvements and Engelharts are entitled to the proceeds from the sale of the improvements.

VIII. MS. STRONG WAS UNJUSTLY ENRICHED WHEN THE ENGELHARTS CURED THE DEFAULT IN THE AMERICAN GENERAL FINANCE LOAN

Ms. Strong was unjustly enriched by a proportion of the $85,000.87 that the Engelharts spent to cure a default on the American General Finance loan that equals any ownership interest she possessed. The test to establish unjust enrichment is discussed in *Austin v. Ettl*, 171 Wn. App. 82, 90, 286 P.3d 85, ¶

17, 286 P.3d 85 (2012):

> A claim for unjust enrichment consists of three elements: (1) a plaintiff conferred a benefit upon the defendant, (2) the defendant had knowledge or appreciation of the benefit, and (3) the defendant's accepting or retaining the benefit without payment of its value is inequitable under the circumstances of the case.

(citing *Young v. Young*, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008)(quoting *Bailie Communications, Ltd. v. Trend Business Systems, Inc.*, 61 Wn. App. 151, 159-160, 810 P.2d 12, review denied 117 Wn.2d 1029 (1991)).

When Kelly Chacon obtained the loan from American General Finance, although Ms. Strong was not a borrower, she joined in granting a Deed of Trust (Ex. 14). Eight years after Mr. Chacon received the loan from American General Finance, in her June 3, 2015 letter to the Engelharts, Ms. Strong wrote:

> Payments haven't been made and it is up around $160,000 as I understand from Lecia. The finance company won't give me any information and it went into foreclosure.

(Ex. 8).

On November 6, 2017, the Engelharts tendered $85,000.87 to cure the default (Exhibits 23 and 24). Ms. Strong had known since at least June 3, 2015 that the loan was in default (Ex. 8). Had the Engelharts not cured the default, the property would have been lost in foreclosure. Curing the default preserved any interest Ms. Strong had in the property. Receiving the benefit of the $85,000.87 without paying a share proportionate to her ownership interest would be inequitable. Ms. Strong was unjustly enriched by a portion of the $85,000.87 equal to any ownership interest she had in the property.

IX. THE CHACONS DID NOT RECEIVE REASONABLE VALUE FOR THE $78,445.48

The trial court found that the $78,445.48 Ms. Strong received from the Chacons were not voidable conveyances or fraudulent transfers under Chapter 19.40 RCW on the basis that Ms. Strong received reasonable value for the funds (Finding of

Fact 1.11 CP 112 lines 10 - 11).

Chapter 19.40 RCW is the Uniform Voidable Transactions Act. It was formerly known as the Fraudulent Transfer Act. Chapter 19.40 RCW was substantially amended by Chapter 57 Laws of 2017. The first subsection of RCW 19.40.051 governs transfers made for insufficient value. RCW 19.40.051(1) provides that:

> **(1)** A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation

(emphasis supplied).

Former RCW 19.40.051(a) provided that:

> **(a)** A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that

> time or the debtor became insolvent as a result of the transfer or obligation

(emphasis supplied). The differences between the two versions of the provision are noted in bold. They are immaterial.

As discussed in § III(D) above, between March 31, 2007 and January 21, 2015, the Chacons paid Ms. Strong the first $47,545.48 of the $78,445.48 (Ex. 12). On February 14, 2015, the Chacons deeded their interest in the property to Ms. Strong (Ex. 15, RP 236 lines 5 - 9). Then, the Chacons paid Ms. Strong the final $30,900 of the $78,445.48 (Ex. 12). The Chacons did not receive reasonable value for any of the $78,445.48.

X. THE $78,445.48 WAS TENDERED TOWARD PAYMENT OF ANTECEDENT DEBT

The trial court found that the transfers were not made for antecedent debt (Finding of Fact 1.11 CP 112 lines 10 - 11). Current RCW 19.40.051(2) states in part that:

> **(2)** A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for antecedent debt ....

(emphasis supplied).

Former RCW 19.40.051(b) stated:

> **(b)** A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt ....

(emphasis supplied).

The differences between the two versions of the second subsection of RCW 19.40.051are immaterial. Under RCW 19.40.011(8)(a)(i) "insider" includes a relative of the debtor. Ms. Strong is Lecia Chacon's mother (Finding of Fact 1.3 CP 110 lines 9 - 10). As discussed in § III(D) above, the Chacons tendered the funds toward payment of the $441,574 antecedent debt.

XI. NO ENGELHART CLAIM IS BARRED BY THE DOCTRINE OF LACHES

The trial court concluded that Engelhart claims under Chapter 41.40 RCW are barred by the doctrine of laches (Conclusion of Law 2.8 CP 114 line 20). The Engelharts assert

no claim under Chapter 41.40 RCW, which governs the Public Employees' Retirement System. The trial court may have intended to refer to Engelhart claims for voidable conveyance or fraudulent transfer under Chapter 19.40 RCW.

A party who asserts a defense of laches has the burden of proving the defense. *Rutter v. Rutter*, 59 Wn.2d 781, 785, 370 P.2d 862 (1962). "Absent highly unusual circumstances, a court" may not impose a shorter period for commencement of an action under the doctrine of laches than under the statute of limitations. *Kelso Education Association v. Kelso School District*, 48 Wn. App. 743, 750, 740 P.2d 889 (Div. II), review denied 109 Wn.2d 1001 (1987).

The elements of laches are: 1) knowledge or reasonable opportunity to discover on the part of a potential plaintiff that he has a cause of action against a defendant; (2) an unreasonable delay by the plaintiff in commencing that cause of action; and (3) damage to the defendant resulting from the unreasonable delay.

Lopp v. Peninsula School District No. 401, 90 Wn.2d 754, 759, 585 P.2d 801 (1978).

Ms. Strong testified that there was no way that the Engelharts could have known that the Chacons were making payments to her (RP 184 lines 16 - 20). The Deed of Trust recorded by the Chacons in 2008 purported to secure payment of $441,574 to Ms. Strong (Ex. 2). Seven years later, in her letter to the Engelharts, Ms. Strong stated that the Chacons owed her $441,000 (Ex. 8 page 1). Ms. Strong disclosed the $78,445.48 in payments rom the Chacons during this litigation (Ex. 12). None of the elements of laches are met.

XII. CLAIMS FOR VOIDABLE TRANSFER OR FRAUDULENT CONVEYANCE SURVIVE THE STATUTE OF LIMITATIONS

The trial court concluded that the claims for fraudulent conveyance under Chapter 19.40 RCW are barred by the Statute of Limitations (CP 114 § 2.7 lines 17 - 19). The complaint was filed September 19, 2017 (CP 1). Under RCW 4.16.170 the filing

of the complaint tolled the statute of limitations. The statute of limitations period for claims under RCW 19.40.051(1) is four years. At most, the statute of limitations bars claims under RCW 19.40.051(1) for transfers prior to September 19, 2013.

The statute of limitations period for claims under RCW 19.40.051(2) is one year. At most, the statute of limitations bars claims under RCW 19.40.051(2) for transfers prior to September 19, 2016.

XIII. IF THE CASE IS REMANDED, THE STATUTE OF LIMITATIONS ON THE FRAUDULENT CONVEYANCE CLAIMS SHOULD BE EQUITABLY TOLLED

Equitable tolling permits a court to allow an action to proceed when justice requires, even though a statutory time period has nominally elapsed. *City of Bellevue v. Benyaminov*, 144 Wn. App. 755, 760, 183 P.3d 1127 (2008). A statute of limitations may be tolled for equitable reasons when circumstances show bad faith, deception, or false assurances by

the defendant, and the claimant exercised due diligence. *Millay v. Cam*, 135 Wn.2d 193, 205, 955 P.2d 791 (1988); *Douchette v. Bethel School Dist. No. 403,* 117 Wn.2d 805, 912, 818 P.2d 1362 (1991).

The Deed of Trust executed in 2008 stated that the Chacons owed Ms. Strong $441,574 (Ex. 2). In the 2015 letter to the Engelharts, Ms. Strong stated that the Chacons owed her $441,000 (Exhibit 8). Ms. Strong testified that the Engelharts could not have known that the Chacons were paying her (RP 184 lines 7 - 20). Ms. Strong's letter was an effort to persuade the Engelharts to walk away from much of the debt owed to them by the Chacons (Exhibit 8). Ms. Strong did not disclose to the Engelharts the tens of thousands of dollars the Chacons had paid her (Exhibits 8 and 12).

The Engelharts exercised due diligence. The payments were revealed in Ex. 12 that was written by Ms. Strong on or after July 6, 2018. If the case is remanded, the trial court should

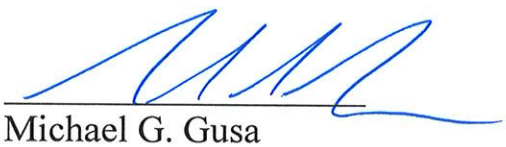
equitably toll the statute of limitations.

CONCLUSION

The Engelharts respectfully request that the Court reverse the trial court and remand the case for further proceedings.

I certify that this document has 7,807 words as calculated in accordance with RAP 18.17(2)(b).

Respectfully submitted,



Michael G. Gusa
Attorney for Appellants
WSBA No. 24059

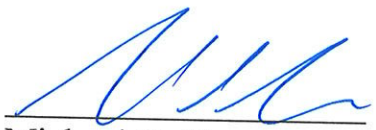
equitably toll the statute of limitations.

CONCLUSION

Appellants Engelhart respectfully request that the Court reverse the trial court and remand the case for further proceedings.

I certify that this document has 7,807 words as calculated in accordance with RAP 18.17(2)(b).

Respectfully submitted,



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APPENDIX

Amended findings of fact, conclusions of law and judgment

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2021 MAY 14 PM 4:29

LINDA MYHRE ENLOW
THURSTON COUNTY CLERK

☒ EXPEDITE
☐ No Hearing is set
☒ Hearing is set:
Date: May 14, 2021
Time:
Judge/Calendar: Amamilo – Ruling

17-2-05147-34
JD 227
Judgment
10306794

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

GERALD ENGELHART and BARBARA ENGELHART, husband and wife,

Plaintiffs,

v.

GERALDINE F. STRONG,

Defendants.

NO. 17-2-05147-34

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Clerk's Action Required [See 3.1 & 3.2]

THIS MATTER having come on regularly before the undersigned Judge of the above-entitled court on April 26 – 27, 2021, for trial without a jury on the issues presented in the pleadings on file, including specifically Plaintiffs' Second Amended Complaint, Defendant's Answer thereto, and the Stipulation and Order for Sale of Real Property. Through these pleadings, the parties ask the Court to determine what their respective interests were in certain real property legally described in the exhibits and to distribute the proceeds from the sale of such property accordingly. The trial being conducted virtually with the Plaintiffs, Gerald and Barbara Engelhart, appearing in person and by and through their attorney, Michael Gusa of Gusa Law Office; Defendant, Geraldine F. Strong, appearing in person and by and through her attorney, Edward Earl Younglove III of YOUNGLOVE & COKER, P.L.L.C;

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and the Court having considered the evidence and the arguments of counsel, including the witnesses and exhibits admitted; now, therefore, the Court makes and enters the following findings of fact, conclusions of law, and judgment.

1. FINDINGS OF FACT

1.1 Plaintiffs' Gerald Engelhart and Barbara Engelhart are now and at all times pertinent hereto were husband and wife and residents of Thurston County, State of Washington.

1.2 Defendant Geraldine F. Strong is now and at all times pertinent hereto was a single woman and a resident of Alameda County, State of California.

1.3 Lecia Kay Chacon is the daughter of the defendant and at times pertinent hereto was married to Kelly Lewis Chacon from February 3, 2005, until their divorce on May 19, 2015.

1.4 In 2005 shortly after the Chacons' marriage, the defendant and the Chacons agreed to purchase a parcel of real estate in Olympia, Thurston County, Washington, which the Chacons, who were living in Olympia at the time, had located (herein "the property"). Their plan was to construct two homes on the property ("the project"), the first as a residence for the Chacons and the second as a residence for the defendant, who will be 89 years old this June. Their intention was that the defendant would move to "the property" in Olympia in order to be near her daughter and son-in-law so that they could assist in her care as she grew older.

1.5 The initial source of funds for the purchase of "the property" and construction of the homes was exclusively from the defendant from loans secured by the defendant's properties in California. The parties anticipated that the Chacons would contribute their fair share of the cost of "the project" over time and that they would be in charge of the construction of the two homes since Kelly Chacon worked in the construction trade.

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1.6 On September 23, 2005, the defendant and the Chacons purchased "the property" from Carolyn Marie Heath for the purchase price of $185,000.00. The total paid at closing, entirely from funds provided by the defendant, was $185,984.46. The purchase money came from a $200,000.00 loan taken out by the defendant. Title to the property was transferred by Statutory Warranty Deed to "Kelly Chacon and Lecia Chacon, husband and wife and Geraldine F. Strong, a single person."

1.7 The legal description of "the property" is: Parcel B of Boundary Line Adjustment No. 98-0101, as recorded April 14, 1998 under Auditor's File No. 3147100.

1.8 Construction of the first home on the property was initially funded from a portion of the proceeds from defendant's first loan and from a second loan taken out by the defendant on her California property in the amount of $225,000.00. At least $201,751.36 of defendant's monies were spent on improvements on the property, principally in the form of a home.

1.9 Of the $425,000.00 borrowed by the defendant on her California properties, at least $387,735.82 was used to purchase the land and for partial construction of the first home, the balance was used to service the defendant's loans to make that contribution. The defendant testified that her total contribution to the project was about $441,000.00. The Chacons' were expected to repay the defendant 50% of contributions made to purchase and improve the property. The Chacons' should have repaid Ms. Strong $220,500.00.

1.10 On March 5, 2007, the Chacons borrowed $135,583.21 from American General Home Equity, Inc. The loan was secured by a Deed of Trust on "the property" in which the defendant participated. Funds from this loan were used to complete construction of the first home on "the property." The Chacons made some payments on this loan over time; however, these were insufficient to keep the loan current and the payoff for the debt came to exceed the amount of the loan.

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1.11 In an effort to contribute their share toward the cost of "the project," between 2007 and July 6, 2018, the Chacons paid $78,445.48 to the defendant, of which $72,356.60 was applied by the defendant toward interest on her loans taken out to buy and improve "the property." Ms. Strong did not charge the Chacon's interest on their share of the costs to purchase and improve the property. These payments, made by the Chacons' to Ms. Strong, are payments toward their cotenant property interests. The Chacon's payments toward the cotenant interest constituted the Chacons contribution toward the acquisition and improvements of "the property" by partially reimbursing the defendant. The Chacons' made payments totaling $78,445.48 to the defendant. These payments represent 35% equivalent of the $220,500.00 owed to Ms. Strong by the Chacons based on their unwritten agreements. The payments were in exchange for an increase in their cotenant interest and constitute reasonably equivalent value and not payment of an antecedent debt. Ms. Strong retained her 50% interest plus the 15% interest remaining unpaid by the Chacons as cotenants for a total of 65% property interest. The Chacons regained a 35% cotenant interest.

1.12 On March 7, 2008, plaintiffs obtained a default judgment against the Chacons community in the total amount of $239,397.82. The judgment was related to separate business dealings between the Chacons and the plaintiffs and were unrelated to either the defendant or "the property."

1.13 Also on March 7, 2008, the Chacons executed a Deed of Trust on "the property" with the defendant as the beneficiary. A Promissory Note from the Chacons to the defendant for the amount reflected in the Deed of Trust was executed by Lecia Chacon on March 25, 2009. However, on October 13, 2010, the Deed of Trust was declared "void and of no force and effect" on the basis that the defendant was not a creditor but that she and the Chacons owned "the property" as tenants in

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common. (Thurston County Superior Court Cause No. 10-2-02270-5.) This had the effect of also voiding the Promissory Note that was an integral part of the "transaction" that was declared void.

1.14 The first home on "the property" was sufficiently complete so that the Chacons used the home as their residence for more than ten (10) years. The second home was never completed, and the defendant was never able to and did not use "the property" as her residence.

1.15 On February 14, 2015, the Chacons quit claimed all their interest in "the property" to the defendant.

1.16 The Chacons were divorced on May 19, 2015.

1.17 Pursuant to a stipulated order, on May 15, 2019, "the property" was sold by the defendant for $577,700.00. Of that amount, $222,298.78 went to Rushmore, the successor in interest to American General to satisfy the Chacons loan secured by its Deed of Trust encumbering "the property." After other costs of sale, net proceeds from the sale in the amount of $324,871.61 were deposited with the Clerk of the Court and, together with any accrued interest, are available for disbursement according to the Court's order.

1.18 The relationship of the parties was as cotenants and not as debtor and creditor.

On the basis of the above findings of fact, the Court now makes and enters the following conclusions of law.

2. CONCLUSIONS OF LAW

2.1 The Court has jurisdiction over the subject matter and the parties.

2.2 The defendant and the Chacons martial community acquired "the property" as tenants in common with the marital community and the defendant each having a presumptive fifty percent (50%) interest based on the Statutory Warranty Deed.

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2.3 The defendant and the Chacons were cotenants, not creditor and debtors.

2.4 The tenant in common interests of the defendant and the Chacons in "the property" should be adjusted to reflect their actual contributions in the acquisition and improvement to "the property."

2.5 Based on the respective contributions of the parties, at the time of trial, the defendant had an interest in the property as a tenant in common of 65%, and the Chacons had an interest of 35%. The interest of the Chacons acquired by the defendant by virtue of the Chacons' 2015 Quit Claim Deed is fully encumbered by plaintiffs' judgment. The defendant should be awarded 65% of the funds in the court registry in the amount of $211,166.55 and the plaintiffs should be awarded 35% of the funds in the court registry in the amount of $113,705.06, plus each party should receive their respective percentage in any accrued interest.

2.6 The plaintiffs' cure of the American General (Rushmore) Deed of Trust default, although added to the amount of their judgment lien, does not increase or otherwise affect the amount awarded to the plaintiffs herein.

2.7 None of the $78,445.48 in transfers from the Chacons to the defendant were either for an antecedent debt or without reasonably equivalent value exchanged and are not Fraudulent (Voidable) Transfers under RCW 19.40.041 or RCW 19.40.051(1) or (2). In addition, any claims under RCW 19.40.051(2) as to any of the transfers are barred by the one-year statute of limitation, as are any claims under RCW 19.40.051(1) as to any transfers prior to October 11, 2015.

2.8 Any of plaintiffs' claims under RCW Ch. 41.40 are barred by the doctrine of laches.

2.9 Each party shall be responsible for their own costs and fees.

On the basis of the findings of fact and conclusions of law, the Court now makes and enters

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the following judgment.

3. JUDGMENT

It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

3.1 The defendant, Geraldine F. Strong, be and hereby is awarded 65% of the funds in the court registry in the amount of $211,166.55, together with the same percentage of any accrued interest. The Clerk of the Court shall issue said amount to the defendant from the proceeds in the court registry, payable to YOUNGLOVE & COKER, P.L.L.C. at 1800 Cooper Point Road SW, Bldg. 16, Olympia, WA 98502. The plaintiffs, Gerald and Barbara Engelhart, be and hereby are awarded 35% of the funds in the court registry in the amount of $113,705.06, together with the same percentage of any accrued interest. The Clerk of the Court shall issue said amount to the plaintiffs from the proceeds in the court registry, payable to GUSA LAW OFFICE at 2018 Caton Way SW, Olympia, WA 98502.

3.2 Defendant be and she is hereby awarded her costs and fees.

DONE IN OPEN COURT this 14th day of May, 2021.

JUDGE SHARONDA D. AMAMILO

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SUPERIOR COURT
THURSTON COUNTY, WA

2021 JUN -3 PM 4:08

Linda Myhre Enlow
Thurston County Clerk

☒ EXPEDITE
☐ No Hearing is set
☒ Hearing is set:
Date: May 14, 2021
Time:
Judge/Calendar: Amamilo – Ruling

17-2-05147-34
JD 239
Judgment
10421503

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

GERALD ENGELHART and BARBARA ENGELHART, husband and wife,

Plaintiffs,

v.

GERALDINE F. STRONG,

Defendants.

NO. 17-2-05147-34

AMENDED *

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Clerk's Action Required [See 3.1 & 3.2]

THIS MATTER having come on regularly before the undersigned Judge of the above-entitled court on April 26 – 27, 2021, for trial without a jury on the issues presented in the pleadings on file, including specifically Plaintiffs' Second Amended Complaint, Defendant's Answer thereto, and the Stipulation and Order for Sale of Real Property. Through these pleadings, the parties ask the Court to determine what their respective interests were in certain real property legally described in the exhibits and to distribute the proceeds from the sale of such property accordingly. The trial being conducted virtually with the Plaintiffs, Gerald and Barbara Engelhart, appearing in person and by and through their attorney, Michael Gusa of Gusa Law Office; Defendant, Geraldine F. Strong, appearing in person and by and through her attorney, Edward Earl Younglove III of YOUNGLOVE & COKER, P.L.L.C;

* see page 7 at 3.2

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and the Court having considered the evidence and the arguments of counsel, including the witnesses and exhibits admitted; now, therefore, the Court makes and enters the following findings of fact, conclusions of law, and judgment.

1. FINDINGS OF FACT

1.1 Plaintiffs' Gerald Engelhart and Barbara Engelhart are now and at all times pertinent hereto were husband and wife and residents of Thurston County, State of Washington.

1.2 Defendant Geraldine F. Strong is now and at all times pertinent hereto was a single woman and a resident of Alameda County, State of California.

1.3 Lecia Kay Chacon is the daughter of the defendant and at times pertinent hereto was married to Kelly Lewis Chacon from February 3, 2005, until their divorce on May 19, 2015.

1.4 In 2005 shortly after the Chacons' marriage, the defendant and the Chacons agreed to purchase a parcel of real estate in Olympia, Thurston County, Washington, which the Chacons, who were living in Olympia at the time, had located (herein "the property"). Their plan was to construct two homes on the property ("the project"), the first as a residence for the Chacons and the second as a residence for the defendant, who will be 89 years old this June. Their intention was that the defendant would move to "the property" in Olympia in order to be near her daughter and son-in-law so that they could assist in her care as she grew older.

1.5 The initial source of funds for the purchase of "the property" and construction of the homes was exclusively from the defendant from loans secured by the defendant's properties in California. The parties anticipated that the Chacons would contribute their fair share of the cost of "the project" over time and that they would be in charge of the construction of the two homes since Kelly Chacon worked in the construction trade.

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1.6 On September 23, 2005, the defendant and the Chacons purchased "the property" from Carolyn Marie Heath for the purchase price of $185,000.00. The total paid at closing, entirely from funds provided by the defendant, was $185,984.46. The purchase money came from a $200,000.00 loan taken out by the defendant. Title to the property was transferred by Statutory Warranty Deed to "Kelly Chacon and Lecia Chacon, husband and wife and Geraldine F. Strong, a single person."

1.7 The legal description of "the property" is: Parcel B of Boundary Line Adjustment No. 98-0101, as recorded April 14, 1998 under Auditor's File No. 3147100.

1.8 Construction of the first home on the property was initially funded from a portion of the proceeds from defendant's first loan and from a second loan taken out by the defendant on her California property in the amount of $225,000.00. At least $201,751.36 of defendant's monies were spent on improvements on the property, principally in the form of a home.

1.9 Of the $425,000.00 borrowed by the defendant on her California properties, at least $387,735.82 was used to purchase the land and for partial construction of the first home, the balance was used to service the defendant's loans to make that contribution. The defendant testified that her total contribution to the project was about $441,000.00. The Chacons' were expected to repay the defendant 50% of contributions made to purchase and improve the property. The Chacons' should have repaid Ms. Strong $220,500.00.

1.10 On March 5, 2007, the Chacons borrowed $135,583.21 from American General Home Equity, Inc. The loan was secured by a Deed of Trust on "the property" in which the defendant participated. Funds from this loan were used to complete construction of the first home on "the property." The Chacons made some payments on this loan over time; however, these were insufficient to keep the loan current and the payoff for the debt came to exceed the amount of the loan.

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1.11 In an effort to contribute their share toward the cost of "the project," between 2007 and July 6, 2018, the Chacons paid $78,445.48 to the defendant, of which $72,356.60 was applied by the defendant toward interest on her loans taken out to buy and improve "the property." Ms. Strong did not charge the Chacon's interest on their share of the costs to purchase and improve the property. These payments, made by the Chacons' to Ms. Strong, are payments toward their cotenant property interests. The Chacon's payments toward the cotenant interest constituted the Chacons contribution toward the acquisition and improvements of "the property" by partially reimbursing the defendant. The Chacons' made payments totaling $78,445.48 to the defendant. These payments represent 35% equivalent of the $220,500.00 owed to Ms. Strong by the Chacons based on their unwritten agreements. The payments were in exchange for an increase in their cotenant interest and constitute reasonably equivalent value and not payment of an antecedent debt. Ms. Strong retained her 50% interest plus the 15% interest remaining unpaid by the Chacons as cotenants for a total of 65% property interest. The Chacons regained a 35% cotenant interest.

1.12 On March 7, 2008, plaintiffs obtained a default judgment against the Chacons community in the total amount of $239,397.82. The judgment was related to separate business dealings between the Chacons and the plaintiffs and were unrelated to either the defendant or "the property."

1.13 Also on March 7, 2008, the Chacons executed a Deed of Trust on "the property" with the defendant as the beneficiary. A Promissory Note from the Chacons to the defendant for the amount reflected in the Deed of Trust was executed by Lecia Chacon on March 25, 2009. However, on October 13, 2010, the Deed of Trust was declared "void and of no force and effect" on the basis that the defendant was not a creditor but that she and the Chacons owned "the property" as tenants in

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common. (Thurston County Superior Court Cause No. 10-2-02270-5.) This had the effect of also voiding the Promissory Note that was an integral part of the "transaction" that was declared void.

1.14 The first home on "the property" was sufficiently complete so that the Chacons used the home as their residence for more than ten (10) years. The second home was never completed, and the defendant was never able to and did not use "the property" as her residence.

1.15 On February 14, 2015, the Chacons quit claimed all their interest in "the property" to the defendant.

1.16 The Chacons were divorced on May 19, 2015.

1.17 Pursuant to a stipulated order, on May 15, 2019, "the property" was sold by the defendant for $577,700.00. Of that amount, $222,298.78 went to Rushmore, the successor in interest to American General to satisfy the Chacons loan secured by its Deed of Trust encumbering "the property." After other costs of sale, net proceeds from the sale in the amount of $324,871.61 were deposited with the Clerk of the Court and, together with any accrued interest, are available for disbursement according to the Court's order.

1.18 The relationship of the parties was as cotenants and not as debtor and creditor.

On the basis of the above findings of fact, the Court now makes and enters the following conclusions of law.

2. CONCLUSIONS OF LAW

2.1 The Court has jurisdiction over the subject matter and the parties.

2.2 The defendant and the Chacons martial community acquired "the property" as tenants in common with the marital community and the defendant each having a presumptive fifty percent (50%) interest based on the Statutory Warranty Deed.

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2.3 The defendant and the Chacons were cotenants, not creditor and debtors.

2.4 The tenant in common interests of the defendant and the Chacons in "the property" should be adjusted to reflect their actual contributions in the acquisition and improvement to "the property."

2.5 Based on the respective contributions of the parties, at the time of trial, the defendant had an interest in the property as a tenant in common of 65%, and the Chacons had an interest of 35%. The interest of the Chacons acquired by the defendant by virtue of the Chacons' 2015 Quit Claim Deed is fully encumbered by plaintiffs' judgment. The defendant should be awarded 65% of the funds in the court registry in the amount of $211,166.55 and the plaintiffs should be awarded 35% of the funds in the court registry in the amount of $113,705.06, plus each party should receive their respective percentage in any accrued interest.

2.6 The plaintiffs' cure of the American General (Rushmore) Deed of Trust default, although added to the amount of their judgment lien, does not increase or otherwise affect the amount awarded to the plaintiffs herein.

2.7 None of the $78,445.48 in transfers from the Chacons to the defendant were either for an antecedent debt or without reasonably equivalent value exchanged and are not Fraudulent (Voidable) Transfers under RCW 19.40.041 or RCW 19.40.051(1) or (2). In addition, any claims under RCW 19.40.051(2) as to any of the transfers are barred by the one-year statute of limitation, as are any claims under RCW 19.40.051(1) as to any transfers prior to October 11, 2015.

2.8 Any of plaintiffs' claims under RCW Ch. 41.40 are barred by the doctrine of laches.

2.9 Each party shall be responsible for their own costs and fees.

On the basis of the findings of fact and conclusions of law, the Court now makes and enters

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the following judgment.

3. JUDGMENT

It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

3.1 The defendant, Geraldine F. Strong, be and hereby is awarded 65% of the funds in the court registry in the amount of $211,166.55, together with the same percentage of any accrued interest. The Clerk of the Court shall issue said amount to the defendant from the proceeds in the court registry, payable to YOUNGLOVE & COKER, P.L.L.C. at 1800 Cooper Point Road SW, Bldg. 16, Olympia, WA 98502. The plaintiffs, Gerald and Barbara Engelhart, be and hereby are awarded 35% of the funds in the court registry in the amount of $113,705.06, together with the same percentage of any accrued interest. The Clerk of the Court shall issue said amount to the plaintiffs from the proceeds in the court registry, payable to GUSA LAW OFFICE at 2018 Caton Way SW, Olympia, WA 98502.

3.2 ~~Defendant be and she is hereby awarded her costs and fees.~~ See 2.9 above.

~~DONE IN OPEN COURT this~~ 14th ~~day of May, 2021~~.

JUDGE SHARONDA D. AMAMILO

Amended Ex parte this 3rd day of June 2021.

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